Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

render such assistance. *Southern Ry. Co.* v. *Reeves*, 116 Ga. 743, 42 S. E. 1015. And where a passenger carrying a valise and a bundle requested assistance and the conductor failed to render it, the carrier was held liable for injuries due to such failure. *Missouri K. & T. Ry. Co.* v. *Buchanan*, 31 Tex. Civ. App. 209, 72 S. W. 96.

It is generally recognized that the carrier is under obligation to furnish aid to the aged, very young, infirm or helpless passenger, especially where the carrier's employees were notified of the passenger's condition. *Lange* v. *Chicago & A. Ry. Co.*, 175 Mo. App. 34, 157 S. W. 850. It has been held, however, that such infirmity must be mental or physical so as to render the passenger unable to take care of himself. *Central Ry. Co.* v. *Carlisle*, 2 Ala. App. 514, 56 South. 737.

One court has declared the carrier owes no duty whatever to assist its passengers to alight. *New Orleans, J. & G. N. R. Co.* v. *Statham*, 42 Miss. 607. Also the failure of a conductor to conform to a rule requiring him to assist lady passengers off its cars will not impose any liability on the carrier unless the rule was known to and relied on by the passenger. *Central R. Co.* v. *Carlisle, supra.* But if it is customary for the carrier's employees to render assistance to alighting passengers and the passengers know of this custom and act accordingly, then a failure to render such assistance will make the carrier responsible. *Younglove* v. *Pullman Co.*, 207 Fed. 797; *Cincinnati, etc., Ry. Co.* v. *Bell*, 25 Ky. 10, 74 S. W. 700.

If, however, a carrier's employees volunteer to render assistance, even where it is not necessary, it will be liable for any negligence connected with the rendering of such assistance within the scope of the servant's employment. *Hanlon* v. *Central R. Co.*, 187 N. Y. 73, 79 N. E. 846, 10 L. R. A. (N. S.) 411. And although an employee is not required to lend assistance to alighting passengers in every case, yet where a brakeman attempted to assist a passenger in alighting and through his negligence the passenger suffered serious injuries the railroad was held liable. *Ray* v. *Chicago & N. W. Ry. Co.*, 163 Iowa 430, 144 N. W. 1018; *Louisville & N. R. Co.* v. *Lee*, 140 Ky. 91, 130 S. W. 813.

Some courts hold that while the carrier ordinarily does not owe any duty of assistance, yet it must provide suitable and safe conveniences at a proper place for the alighting of passengers and must bring its vehicle to a stop at that place. *Raben* v. *Central Iowa R. Co.*, 74 Iowa 732, 34 N. W. 621; *Southern Ry. Co.* v. *Hobbs*, 118 Ga. 227, 45 S. E. 23, 63 L. R. A. 68. And where the carrier stops at an unsafe and unusual place it owes the duty of assistance to passengers alighting there. *Memphis R. Co.* v. *Whitfield*, 44 Miss 466, 7 Am. Rep. 699; *McGovern* v. *Interurban R. Co.*, 136 Iowa 13, 111 N. W. 412, 13 L. R. A. (N. S.) 476; *Cartwright* v. *Chicago R. Co.*, 52 Mich. 606, 18 N. W. 380, 50 Am. Rep. 274. Thus, a carrier was held liable for a failure to render assistance where a passenger was forced to alight during a severe snow storm at an improper landing place where no platform had been provided. *Alexandria & F. R. Co.* v. *Herndon*, 87 Va. 193, 12 S. E. 289.

EVIDENCE—DYING DECLARATIONS—STATEMENTS OF OPINION.—The plaintiff-in-error was being tried for manslaughter. The state sought to in-

troduce the following dying declaration of the deceased: "He (the defendant) shot me and didn't have any cause; I didn't do anything to him;" and, "O Lord, what a pity for Frank McNeal (the defendant) to shoot a poor boy like I am for nothing. I never done anything to Frank." The admission of these declarations was contested on the ground that they were mere statements of opinion. *Held*, the first declaration is admissible; the second declaration is inadmissible. *McNeal* v. *State* (Miss.), 76 South. 625.

The so-called opinion rule has been thus stated: When it is possible to inform the jury fully enough to enable them to dispense with the opinions or deductions of witnesses from things noticed by the witnesses themselves, such opinions or deductions should not be received. *Evans* v. *People*, 13 Mich. 35. The true theory of this rule is simply the exclusion of superfluous evidence; the opinion of the witness is superfluous as the jury may draw the inference as well as the witness. Hence the opinion is excluded. WIGMORE, EVIDENCE, § 1918. Its purpose is to avoid the confusion of the main issues by an additional mass of testimonial differences and opinions, and to curb the occasional tendency of the jury to decide simply according to the preponderance of numbers and of influential names. WIGMORE, EVIDENCE, SUPRA.

In the application of this rule to dying declarations, great difference of opinion and confusion of ideas are encountered. All authorities agree that dying declarations which speak to "facts" are admissible. But the rule is stated that such declarations must speak to facts only, and not to mere matters of opinion. GREENLEAF, EVIDENCE, 16 ed., § 159. And this statement has been very generally adopted by the courts. *White* v. *State*, 100 Ga. 659, 28 S. E. 423; *State* v. *Clemons*, 51 Iowa 274, 1 N. W. 546; *Wroe* v. *State*, 20 Ohio St. 460; *State* v. *Saunders*, 14 Ore. 300, 12 Pac. 441; *State* v. *Gile*, 8 Wash. 12, 35 Pac. 417. It is based on the theory that the declarations of the deceased are admissible only to those things which he would have been competent to testify to if sworn in the cause; thus, in general, excluding opinions, mental expressions, etc. *Berry* v. *State*, 63 Ark. 382, 38 S. E. 1038; *Cleveland* v. *Commonwealth* (Ky.), 101 S. W. 931. The test as to what is fact and what is opinion, within the meaning of the rule laid down by the courts to determine this question, is that, if the statement is the direct result of observation through the declarant's senses, it is of fact and admissible; but if the statement is derived by a source of reasoning from collateral facts, it is of opinion, and inadmissible. *Housee* v. *State*, 9 Miss. 107, 48 South. 3, 21 L. R. A. (N. S.) 840. The application of this test has led to many fine and technical distinctions, and has produced many quibbling rulings. WIGMORE, EVIDENCE, § 1447. Thus, the dying declaration of the deceased, that the accused was not to blame but that it was his fault, was held to be a mere expression of opinion and inadmissible. *State* v. *Sale*, 119 Iowa 1, 92 N. W. 680; *Hollywood* v. *State*, 14 Wyo. 493, 120 Pac. 471. While the declaration that he "shot me for nothing," or "without cause" was held to be a statement of fact. *Gerald* v. *State*, 128 Ala. 6, 29 South. 614; *Lockhart* v. *State*, 53 Tex. Cr. App. 589, 111 S. W. 1024; *State* v. *Williams*, 168 N. C. 191, 83 S. E. 714. But see *contra*, *Pow-*

ers v. *State*, 74 Miss. 771, 21 South. 657; *Allen* v. *Commonwealth*, 161 Ky. 325, 182 S. W. 176.

Such inconsistent holdings, and the strained constructions put upon simple expressions of opinion, in order that they might be received in evidence, are convincing of the fact that there is something wrong with the opinion rule as applied to dying declarations. On reason, the opinion rule should not apply to dying declarations. As stated above, the theory of the rule is that whenever the witness can state specifically the detailed facts observed by him, the inferences to be drawn from them can usually be drawn by the jury, hence the witness' inferences become superfluous. But as applied to dying declarations it is impossible to obtain any more detailed data than that which his statements may contain, because the deceased is dead; and hence his inferences are not superfluous, but become indispensable, and the opinion rule should not apply. WIGMORE, EVIDENCE, § 1447. This logical and sound argument has been adopted by at least two courts in very recent decisions. In *Thomas* v. *State* (Okl.), 164 Pac. 995, a dying declaration that "those negroes shot me and robbed me" was received in evidence, the court refusing to draw a distinction between fact and opinion. In *Pippin* v. *Commonwealth*, 117 Va. 919, 86 S. E. 152, a similar declaration that "he (the accused) done it a-purpose" was held admissible, the court adopting Wigmore's view *in toto*.

In the instant case the court held that the declaration that the accused "shot me and didn't have any cause" was a statement of a fact and admissible; while another declaration, "O Lord, what a pity for Frank McNeal (the accused) to shoot a poor boy like I am. I never did anything to Frank" was held to be a mere exclamation of self-pity, and inadmissible. Clearly both of the declarations were not statements of fact, but the court, fettered by its previous decisions, felt bound to hold the first declaration a statement of fact and admissible; but held the other declaration inadmissible on the ground it was a mere exclamation of self-pity. In reality no distinction can be drawn between the two declarations. If one is fact, they are both fact; if one is opinion, both are opinion. This case is a good illustration of the inconsistent doctrines that have emanated from the application of the opinion rule to dying declarations, and which might be eliminated from our law by the abolition of the opinion rule as to dying declarations.

INSURANCE—FIRE POLICY—EXPLOSIONS.—The insured took out a fire insurance policy on his house. The policy contained a clause exempting the insurer from liability for loss caused by an explosion of any kind, unless fire ensued, and in that event for the damage caused by the fire only. A fire occurred, followed by an explosion. The damage as shown, occasioned by both fire and explosion amounted to $661.43, and the loss occasioned by fire alone, when considered as if no explosion had occurred, amounted to $58.00. *Held*, the plaintiff is entitled to recover for the full amount of damages due to fire and explosion. *Western Ins. Co.* v. *Skass* (Colo.), 171 Pac. 358.

The weight of authority supports the rule that where an explosion